United Nations A/HRC/30/NGO/123

General Assembly

Distr.: General
8 September 2015

English only

Human Rights Council
Thirtieth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the International Educational Development, Inc., a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-15223(E)

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Addressing the rights violations against the Hmong people in the Lao People's Democratic Republic*

International Educational Development, Inc. and the Association of Humanitarian Lawyers have been concerned for some about the dire situation of the Hmong people in the Lao People's Democratic Republic (hereinafter Laos). Our home state California has welcomed tens of thousands of the Hmong refugees who first began to flee Laos at the end of the Vietnam War and who continue to flee, seeking asylum due to persecution and other gross violations of human rights. The Hmong people still in Laos are at grave risk of extermination.

Brief background of the situation[1]

The Hmong people in Laos have as their traditional homeland the areas in and around what was known as the Ho Chi Minh Trail. The United States began covert actions against the Pathet Lao forces as early as the Kennedy Administration before the United States entered into the war in Vietnam. The Pathet Lao opposed the government of Laos at the time and supported the government of North Vietnam. The Hmong formed military forces and aided the United States in operations against the Pathet Lao. In 1968 the United States began an air war and other military actions against the Pathet Lao forces along the Ho Chi Minh Trail and elsewhere in the Hmong areas. The Hmong continued to aid the United States forces. There was essentially no media information about this for a number of years. In 1975 the Pathet Lao took over Laos after the fall of Saigon and the exodus of the United States forces. The new Laotian government vowed to wipe out the Hmong in a planned program of both extermination and ethnic cleansing, as they were viewed as the enemy. Thousands of Hmong people fled to Thailand where they were kept in camps. The United States began accepting Hmong refugees at the end of 1975, resettling nearly 30,000 primarily in Minnesota and California. There were reports of chemical warfare against the Hmong between 1975 and 1979. The Hmong continued to flee in large numbers. By 2010 there were nearly 250,000 Laotian Hmong in the United States and only about 250,000 left in Laos. Hmong still in the camps in Thailand are at constant risk of forcible repatriation to Laos by Thailand: in 2009 4,000 Hmong were forcibly deported to Laos.[2] Even Hmong people granted refugee status in third countries were not allowed to leave Thailand for them but instead were placed in detention pending repatriation to Laos.[3]

Recent action against the Hmong in Laos

The Hmong people, especially those in the Phou Bia area, face constant military actions against them as they are still considered the enemy. As a consequence they are forced to relocate and hide on a continual basis. Food and medicine are in short supply as the Laotian authorities have a blockade on these items Because of the constant moving there are no stable places of residence and even temporary structures are destroyed by the Lao forces. Agriculture is difficult if not impossible, compounding the serious food shortages due to the blockades: when the Lao forces find fruit tree or crops they destroy them. This is a crime against humanity as set out in Article 7 (1)(b) and (2)(b) of the Rome Statute that identify creating conditions of life that are extremely difficult and the denial of food and medicine as elements of the crime of extermination.[4]

Hmong children are at particular risk of loss of life and serious, permanent physical conditions. In April 2011 the Committee on the Rights of the Child considered the malnutrition and high incidence of wasting disease in the rural

[1] *See, e.g.* J. Lindsay, "Why are the Hmong in America," www.JeffLindsay.com/hmong, also available in FutureHmong Magazine (2002).

[2] B. Doherty, "Thailand begins deportation of more than 4,000 Hmong asylum seekers," www.theguardian.com/world/2009/dec/28/Thailand-deportation-Hmong-Laos.

[3] W.L. George, "Hmong Refugees Live in Fear and Laos in Thailand, *Time*, 24 July 2010.

[4] The Lao People's Democratic Republic has not ratified the Rome Statue or Regulations, but we refer to its previsions to underscore the gravity of the offenses by the authorities against the Hmong people.

areas where the Hmong are an emergency situation. Since that alert, there has been no change in the situation of Hmong children.

Ineffective international action to date regarding the Hmong situation

The Committee on the Elimination of Racial Discrimination (Committee) has raised serious concerns about the situation of the Hmong people in Laos since 2003 when it invoked its early warning and urgent action procedures. Concerns and recommendations were also prominent in its review of Laos, especially at its review in 2012.[5] Expressing concern about the violence against the Hmong, the Committee urged proper and impartial investigation into the areas and that the authorities should invite the relevant United Nations mandate holders. The Committee also expressed concern over disparities in health outcomes in rural areas, land seizure concerns and attempts at forced assimilation and the loss of the cultures of ethnic groups. These concerns all reflect the above-cited provisions regarding crimes against humanity, especially extermination, in the Rome Statute.

Laos had its Universal Periodic Review in 2014/2015, with the report (A/HRC/29/7/Add.1) adopted on 23 June 2015. Concerns regarding the Hmong were raised by treaty bodies, especially the CERD Committee.[6] The Compilation report noted that several treaty bodies stressed overdue reports. The CERD Committee noted that the responses it requested in 2013 regarding violence against the Hmong were unfulfilled. It indicated that it had raised allegation of serious actions against the Hmong since 2003, and that it placed the situation under its early warning and urgent action procedures, to no avail. The Compilation indicated requests for visits from special procedure mandate holders regarding cultural rights, housing and freedom of assembly, as yet unaccepted.

A joint statement (JS4) was submitted by two non-governmental organizations and referred to in the Summary (A/HRC/WG.6/21/LAO/3 (20 October 2014). This statement identified the crisis situation of the Hmong people, especially the starvation and lack of basic medical supplies and the forced repatriation of refugees from neighboring countries.

In the document as adopted, only Canada made specific mention of the Hmong people, although a number of delegations identified discrimination and general concerns about ethnic peoples.

The only current mention of Laos by special procedures mandate holders is in the report on human right defenders. Several other mandate holders have requested visits. Laos has not issued a universal invitation.

The only written mention of Laos by non-governmental organizations outside of the UPR process is a written statement by Jubilee Campaign.[7]

Conclusions and recommendations

It is patently clear that the Laotian authorities have no intention of adequately addressing the situation of the Hmong people. It is also clear that action by United Nations bodies to date is grossly inadequate to address the extremely serious situation of the Hmong people in Laos. Laos has not allowed on site investigations and without such investigation, it is difficult to formulate effective action and get an effective plan implemented. The treaty bodies can only issue early warnings and urgent actions, but there has to be an effective action in response. The UPR process can serve to illustrate or identify violations, even serious ones, but it alone is not an action procedure. The International Committee of the Red Cross can undertake relief efforts, but in this case are restrained from doing so by the relevant authorities.

We recommend the following actions that should be undertaken:

1. The international community should invoke the Responsibility to Protect (R2P) mechanisms as soon as possible.

[5] Concluding observations (2012) CERD/C/LAO/CO/16-18 (24 March 2012).
[6] The Compilation report is A/HRC/WG.6/21/LAO/2.
[7] A/HRC/22/NGO/128.

2. The Secretary-General should consider action on this situation such as encouraging or instigating independent investigation.
3. The relevant mandate holders of the Council, including those addressing summary execution, disappearances, torture, internally displaces persons, health, food, water and sanitation, arbitrary detention, human rights defenders, truth, and minority issues should request on site visits to the Hmong areas in Laos, either alone or in concert.
4. Given that nearly all special procedures are highly relevant to the situation in the Hmong areas of Laos, the Council should consider requesting the High Commissioner to undertake action, including establishing a team of inquiry as has been established in other situations. In the alternative, the Council should establish its own committee of inquiry or appoint a special rapporteur or independent expert.

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*Association of Humanitarian Lawyers, NGO without consultative status, also shares the views expressed in this statement.